

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

AUG - 3 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Personnel Communications Industry)
Association's Broadband Personal)
Communications Services Alliance's)
Petition for Forbearance for Broadband)
Personal Communications Services)
)
Biennial Regulatory Review –)
Elimination or Streamlining of)
Unnecessary and Obsolete)
CMRS Regulations)
)
Forbearance from Applying Provisions)
Of the Communications Act to Wireless)
Telecommunications Carriers)

WT Docket No. 98-100

COMMENTS OF GTE

Dated: August 3, 1998

GTE Service Corporation and its affiliated
domestic telephone operating, wireless, and
long distance companies

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036
(202) 463-5214

Their Attorneys

No. of Copies rec'd
LH:PCDE

024

TABLE OF CONTENTS

	PAGE
SUMMARY	ii
I. BACKGROUND	2
II. DISCUSSION	4
A. GTE agrees with Commissioners Powell and Furchtgott-Roth that the Commission's approach to forbearance is skewed.	4
B. Forbearance from applying Section 226 of the Act to wireless carriers is justified.	6
1. The Commission's action regarding forbearance from applying Section 226 of the Act should apply equally to all CMRS providers.....	6
2. The relationship between CMRS providers and aggregators is not conducive to implementation of TOCSIA requirements.	6
3. The FCC should forbear from enforcing the TOCSIA branding and rate disclosure requirements for CMRS providers.....	8
a) Branding	8
b) Audible rate disclosure	9
4. The costs of implementing TOCSIA requirements are not justified by the meager benefits received.	9
5. Rail telephone and Airfone applications present special concerns.....	12
III. CONCLUSION	14

SUMMARY

GTE agrees with the comments made by Commissioners Powell and Furchtgott-Roth regarding the majority's approach to forbearance. GTE believes that rather than maintain regulation as a means of eradicating all carrier misconduct, the FCC should forbear from enforcing regulatory requirements in favor of strong enforcement actions.

GTE supports forbearance from the requirements of Section 226 of the Act for CMRS providers. GTE believes that because CMRS providers cannot identify traffic as originating from an aggregator and in many cases have no relationship with aggregators, application of the TOCSIA requirements makes no sense. GTE also believes that, given that aggregators set independent rates for public wireless service, the call branding and rate disclosure requirements provide little, if any benefits.

GTE does not believe that cost of compliance is a relevant criteria for the FCC to consider in evaluating whether to forbear from applying TOCSIA requirements to CMRS providers. Nonetheless, GTE submits that the cost of complying with TOCSIA is substantial and far outweighs any benefit provided.

Finally, with respect to application of Section 226 to GTE's Railfone and Airfone operations, GTE also believes that forbearance is warranted. However, if the Commission decides not to forbear, it should amend its TOCSIA rules to impose requirements that consider the unique characteristics of each operation.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Personnel Communications Industry)	
Association's Broadband Personal)	
Communications Services Alliance's)	
Petition for Forbearance for Broadband)	
Personal Communications Services)	
)	
Biennial Regulatory Review –)	WT Docket No. 98-100
Elimination or Streamlining of)	
Unnecessary and Obsolete)	
CMRS Regulations)	
)	
Forbearance from Applying Provisions)	
Of the Communications Act to Wireless)	
Telecommunications Carriers)	

COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone operating, wireless, and long distance companies¹ (collectively, "GTE") hereby file comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding

¹ These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

released by the Federal Communications Commission's ("FCC" or Commission") on July 2, 1998.² In the *Notice*, the Commission seeks comment, *inter alia*, regarding whether it should forbear from applying Section 226 of the Communications Act ("the Act") to wireless carriers.³ As discussed below, GTE opposes both the FCC's approach to forbearance and its reluctance to grant forbearance of the TOCSIA provisions for wireless carriers. GTE urges the Commission, in the context of this proceeding, to forbear from applying Section 226 of the Act to wireless carriers.

I. BACKGROUND

Congress passed TOCSIA in response to the practices of certain providers of landline operator services ("OSPs"). These practices include charging exorbitant rates, blocking access to other long-distance carriers, and handing-off calls to other carriers that show points-of-origin different from the location the call was placed ("splashing"). TOCSIA addressed these issues by requiring aggregators (persons, such as hotels or airports, making telephones available to transient users) to disclose certain consumer information about the presubscribed OSP at the telephone location and to permit

² Personal Communications Industry Association's Broadband Personal Communications Alliance's Petition for Forbearance For Broadband Personal Communications Services; Biennial Regulatory Review – Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100; Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33; GTE Petition for Reconsideration or Waiver of a Declaratory Ruling, MSD-92-14; *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 98-134 (released July 2, 1998) (hereinafter "*Forbearance Order*" or "*Notice*").

³ 47 U.S.C. § 226. Section 226 codifies provisions of the Telephone Operator and Consumer Services Improvement Act of 1990 ("TOCSIA").

unblocked 800, 950 and 10XXX access to the customer's preferred OSP.⁴ The Act requires OSPs to brand calls, disclose rate information upon request, transfer calls to the customer's preferred OSP on request, and refrain from call splashing.⁵

Previously, the FCC has determined that TOCSIA requirements apply to wireless carriers in the following circumstances: (1) mobile phones placed in rental cars; (2) mobile phones placed on railroad cars and in airplanes; and (3) stationary payphones on public highways that use wireless technology.⁶

In 1997, the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association ("PCIA") filed a Petition for Forbearance ("Petition") asking the FCC to forbear from applying several sections of the Act, including Section 226. In the *Forbearance Order*, the Commission determined that, except for the provisions relating to unblocked access and the filing of informational tariffs, the arguments raised by PCIA, GTE and others were inadequate to support forbearance from TOCSIA provisions.⁷

Rather than granting PCIA's Petition to forbear from TOCSIA, the Commission initiated the instant rulemaking proceeding seeking comment regarding whether such

⁴ 47 U.S.C. § 226(c).

⁵ 47 U.S.C. § 226(b).

⁶ Petition for Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet are Not Subject to the Telephone Operator Consumer Services Improvement Act of 1990, *Declaratory Ruling*, 8 FCC Rcd 6171, 6174-6175 (Com. Car. Bur. 1993) ("*GTE Declaratory Ruling*").

⁷ *Forbearance Order* at 33-44.

forbearance is justified. In the *Notice*, therefore, the Commission seeks specific information relevant to determining whether, and in what respects, it should modify or eliminate application of TOCSIA to CMRS providers and aggregators.⁸

II. DISCUSSION

A. GTE agrees with Commissioners Powell and Furchtgott-Roth that the Commission's approach to forbearance is skewed.

As an initial matter, GTE notes that both Commissioner Powell and Commissioner Furchtgott-Roth took exception to the Commission's approach to forbearance in the competitive CMRS marketplace. Thus, Commissioner Powell, in his partial dissent, stated that

the majority decision denies most of the subject request to forbear based on speculative fears and outdated rationales that raise the bar so high that future and pending forbearance petitions – even in the most competitive segment of the telecommunications industry and in geographic markets that are fully competitive – do not seem to stand a chance.⁹

Similarly, Commissioner Furchtgott-Roth, dissenting from what he characterized as a “very limited forbearance action,” stated that he

Challenge[s] the majority's implicit view that manifest competition – indicated by the existence of as many as six facilities-based competitors in some markets – provides insufficient justification to deregulate. Fundamentally, I believe the question regulators should ask about existing rules is not whether there is sufficient justification to *de*-regulate but, rather, whether there is continuing justification to regulate.¹⁰

⁸ *Notice* at 43 (¶ 89).

⁹ *Forbearance Order*, Separate Statement of Commissioner Michael Powell Dissenting in Part (“Powell Statement”), at 1.

¹⁰ *Forbearance Order*, Dissenting Statement of Commissioner Harold W. Furchtgott-Roth (“Furchtgott-Roth Statement”), at 1 (emphasis in original).

GTE agrees with both Commissioners regarding the state of competition in the CMRS market and majority's flawed approach to forbearance. GTE agrees that competition among CMRS providers is thriving. In the past several years, particularly since the arrival of personal communications services ("PCS") and specialized mobile radio ("SMR") services competitors, CMRS markets have become intensely competitive and CMRS providers like GTE have had to alter the way they do business in order to compete in the marketplace. Indeed, Commissioner Furchtgott-Roth discusses in his statement the level of CMRS competition currently existing. Moreover, Commissioner Furchtgott-Roth notes that the FCC has held the CMRS market out as an example of fierce competition.¹¹

GTE also agrees that the majority's approach to forbearance in an admittedly competitive market is seriously flawed. Both in ruling on past forbearance petitions and in the *Notice*, the majority's focus appears to be aimed at determining (1) whether some sustainable theory exists to support a finding that regulatory intrusion is needed to protect consumers from carrier misconduct; and (2) whether the threat of the perceived dangers outweighs the cost of regulation.¹² Rather than the majority's approach of eradicating all forms of potential misconduct, GTE agrees with Commissioner Powell

¹¹ *Id.*, at 1-2.

¹² See, e.g., *Notice* at 48-49 (¶ 99) (here, in the context of considering whether aggregators of pay telephone CMRS service should continue to be required to disclose the local coin rate, the FCC focuses not on whether, in light of competition, consumers require the protection this regulation was designed to render, but rather on the costs of compliance for the aggregator and whether any alternative means of protecting consumers exists).

that the Commission's role should be to eliminate regulations to the maximum extent possible and rely on strong enforcement measures to police any incidents of misconduct that may arise.¹³ GTE fears that, given the majority's approach to forbearance under Section 10 of the Act, this and most future forbearance petitions will be hopeless endeavors.

B. Forbearance from applying Section 226 of the Act to wireless carriers is justified.

1. The Commission's action regarding forbearance from applying Section 226 of the Act should apply equally to all CMRS providers.

GTE supports the forbearance of TOCSIA requirements for all CMRS providers. Thus, GTE agrees with the Commission's tentative proposal that any decision to forbear from applying Section 226 of the Act should apply to all CMRS providers. As the Commission previously noted, cellular, PCS and CMRS/SMR providers all compete with one another for customers. The Commission should not take action in this proceeding that will result in unequal regulation applying to any one of these classes of CMRS service.

2. The relationship between CMRS providers and aggregators is not conducive to implementation of TOCSIA requirements.

The Commission seeks comment regarding whether CMRS providers are able to identify calls originating placed or received through aggregators.¹⁴ Two factors prevent CMRS carriers from being able to identify calls that originate from an aggregator selling

¹³ Powell Statement at 7-8.

¹⁴ Notice at 45 (¶ 93).

wireless service to transients. First, the technology employed by GTE does not enable it to identify a call as originating from a customer of an aggregator. Determination of who is using the service is made only at billing time when the CMRS totals the airtime, and bills the customer.

Second, GTE and other CMRS providers are not always able to determine if the customer is a reseller or aggregator and, if so, if the customer is providing wireless services to transients. FCC rules forbid CMRS providers from restricting customer use of the underlying service and require that carriers not restrict resale. As a result, GTE does not inquire as to whether the customer is subscribing to GTE's service in order to provide public service to transient users, and in most cases does not know when its service is being used in this manner.

Moreover, even if GTE could identify a customer as an aggregator, it still would not be in a position to enforce compliance with aggregator TOCSIA requirements as required by Section 226(b)(1)(D).¹⁵ Aggregators may purchase blocks of airtime from several service providers. In some cases, the entity providing service to the aggregator may be a reseller that purchases the underlying service from GTE. In such cases, the underlying CMRS provider would have no contractual relationship with the aggregator (and no tariff).

¹⁵ 47 U.S.C. § 226(b)(1)(D). This section requires OSPs, in this case the underlying carrier, to "ensure by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of subsection (c) and, if applicable, subsection (e)(1)."

3. The FCC should forbear from enforcing the TOCSIA branding and rate disclosure requirements for CMRS providers.

TOCSIA requires that each OSP identify itself before any charge is incurred, permit the customer to terminate the telephone call at no charge before the call is connected, and disclose to the consumer upon request and at no charge a quotation of the rates or charges for the call, the methods by which the charges will be collected, and the methods by which complaints will be resolved.¹⁶ The Commission seeks comment regarding whether it should continue to enforce these requirements.¹⁷ As discussed below, GTE believes the FCC should forbear from enforcing these requirements for CMRS providers.

a) Branding

The requirement that the underlying carrier identify itself to the customer was intended to benefit consumers by allowing the caller the opportunity either to switch OSPs or to switch long-distance service providers by accessing the interexchange carrier of its choosing. The underlying presumption is that if the caller is unfamiliar with the OSP, it may wish to switch to a carrier it knows and trusts.

In the wireless context, however, this information is of little or no use. First, as discussed below, the rates charged for wireless public phone service are typically set by the aggregators. Thus, the identity of the underlying carrier does not affect the rate charged. Second, because the identity of the home service provider is programmed

¹⁶ 47 U.S.C. § 226(b)(1).

¹⁷ Notice at 50-51 (¶¶ 102-104).

into the phone, a customer using a wireless public phone cannot choose the carrier it wishes to provide local service. Third, because wireless phones are typically mobile, the identity of the underlying service provider may change during a call.¹⁸ Finally, wireless public phone users are free to use the interexchange carrier of their choice, regardless of the underlying carrier.

b) Audible rate disclosure

The FCC should also forbear from enforcing the requirement that the underlying carrier provide rate information to callers using public wireless phones. As noted above, the underlying carrier, in most cases is not aware that its service is being used to provide public service to transient users. In any event, the aggregator determines the rates for such service. As such, the only information the underlying service provider could provide the end user is the rate it charges to the aggregator. Since this rate is not likely to be the charge applicable to the call, requiring underlying carriers to provide such information is unnecessary. Indeed, by providing customers with rate information different from the rate charged, the current requirement will only serve to confuse and anger customers.

4. The costs of implementing TOCSIA requirements are not justified by the meager benefits received.

In the *Notice*, the FCC seeks specific information regarding the cost to carriers to comply with TOCSIA requirements. As discussed below, GTE submits that cost of

¹⁸ Such is the case with GTE Railfone. To provide Railfone service, GTE subscribes to the offerings of several different underlying service providers. As the train moves from one location to another, the identity of the underlying service providers constantly changes.

compliance is significant and is not justified by the benefits enforcement of TOCSIA provides in the CMRS context.

As an initial matter, however, GTE is concerned that the Commission continues to seek exact cost information in spite of evidence that most, if not all, of the TOCSIA requirements provide little public benefit to users of wireless public phones. The implication of the Commission's information request is that even if a regulation serves no significant purpose, the FCC will continue to enforce it if compliance is not overly costly.

GTE believes that the FCC's examination of cost of compliance evidence is beyond the scope of its authority. Section 10 of the Act requires the FCC to forbear from enforcing a provision when it determines that (1) enforcement is not necessary to ensure against unjust or unreasonable acts or practices, or unreasonably discriminatory rates; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.¹⁹ Nowhere does the statute provide that the FCC may consider the cost of compliance in determining whether to forbear. Rather, the FCC must forbear from enforcing any requirement that meets the above-listed requirements regardless of the cost of compliance. Accordingly, GTE believes the cost information sought by the Commission is entirely irrelevant.

Assuming, *arguendo*, that the FCC can justify reliance on cost information in making its forbearance determination, GTE maintains that the cost of compliance with TOCSIA outweighs the benefits of enforcement in the CMRS context. For example, as

¹⁹ 47 U.S.C. § 160(a).

noted above, GTE's systems are currently unable to identify a call as originating from an aggregator providing service to transient users. In order to attempt to make this identification, GTE would have to modify its systems and procedures to implement a completely new number tracking system and make network modifications. In addition, in order to assist in identifying public CMRS phone service customers, information systems would have to be modified to allow for information to flow between underlying wireless service providers, aggregators and resellers.

GTE's equipment vendors are not currently able to provide exact cost information to implement this capability. GTE estimates, however, that the network changes alone would cost millions of dollars to implement.

Absent an ability to identify a call as originating from an aggregator, in order to comply with TOCSIA requirements carriers would need to provide TOCSIA information for every call. There are now in excess of 60 million wireless customers. Requiring carriers to provide TOCSIA information for every call placed in order to protect a small percentage of customers is unreasonable. Moreover, applying TOCSIA requirements to all calls would place an undue burden on all wireless systems, waste capacity, and be even more costly to implement.

GTE believes that the cost of compliance with TOCSIA OSP provisions are not justified by the miniscule potential benefits that TOCSIA might bring to transient wireless public phone users. As such, GTE believes enforcement of TOCSIA for CMRS providers would not be in the public interest.

5. Rail telephone and Airfone applications present special concerns

In past pleadings before the Commission, GTE has argued that application of TOCSIA regulations to GTE Railfone and Airfone is not necessary. Thus, in the case of GTE's Railfone operation, GTE voluntarily discloses TOCSIA-like information to its customers and allows its customers 800 number access to long distance providers. GTE has shown that, in the Railfone context, TOCSIA requirements such as the requirement to provide information about the identity of the underlying carrier, the requirement to provide access to a different underlying carrier, the call branding, 950 and 10xxx access requirements, and the connection of emergency call requirements are either irrelevant, impractical, or technically infeasible.

Similarly, GTE Airfone voluntarily complies with TOCSIA's consumer information requirements in a number of ways. Airfone identifies itself as the carrier through literature made available to all passengers, through words printed on handsets or appearing on handsets LCD screens and through seat pocket cards. Customers are provided with a customer service number, with detailed rate information, and information regarding how to file complaints with the FCC. GTE provides 800 number access to interexchange carriers to all passengers.²⁰ Finally, as with Railfone, GTE believes that TOCSIA's emergency calling requirement is impractical.

Given that GTE Railfone and Airfone cannot comply with some of TOCSIA's provisions, each entity voluntarily complies with those provisions that are technically

²⁰ Access through 950 access codes is not technically feasible, while 10xxx access would impose substantial additional costs in system upgrades.

feasible, and neither entity has faced the type of complaints that led Congress to adopt TOCSIA in the first place, GTE submits that forbearance from enforcing TOCSIA against GTE Railfone and Airfone is neither necessary nor in the public interest.

In the event, however, that the Commission finds that continued enforcement of TOCSIA's provisions in the Railfone and Airfone context is justified, the Commission should, at minimum, amend its requirements to reflect the unique character of each service. In particular, in the Railfone context, the FCC should (1) forbear from enforcing the call branding requirement; (2) require only 800 access; and (3) forbear from enforcing the requirement that OSPs and aggregators ensure the immediate connection of emergency telephone calls. In the Airfone context, the Commission should (1) find that Airfone's method of informing customers of the identity of the caller²¹ is sufficient; (2) require only 800 access; and (3) forbear from enforcing the requirement that OSPs and aggregators ensure the immediate connection of emergency telephone calls.

²¹ GTE Airfone identifies itself to callers through literature made available to passengers, through words printed on handsets or appearing on LCD screens, and through seat pocket cards.

III. CONCLUSION

GTE continues to oppose the application of TOCSIA requirements to broadband CMRS providers. GTE believes that the TOCSIA requirements serve little or no regulatory purpose in the wireless context and impose substantial costs of compliance on carriers.

Dated: August 3, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone operating, wireless and
long distance companies

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

By *Andre J. Lachance*
Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036
(202) 463-5276

Their Attorneys